



The Global Initiative
for Economic, Social and Cultural Rights

JOINT PARALLEL REPORT TO THE UNITED NATIONS

HUMAN RIGHTS COMMITTEE

United States of America, 109th Session, 14 October - 1 November 2013

Submitted by:

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and

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I. Introduction

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.
2. The International Human Rights Clinic at Western New England University School of Law is a non-profit educational endeavor committed to advancing human rights across borders.
3. The Global Initiative for Economic, Social, and Cultural Rights and the International Human Rights Clinic at Western New England University School of Law would like to bring to the attention of the Human Rights Committee emblematic factual situations dealing with the extra-territorial obligations of the State Party to respect and to ensure Covenant rights abroad, including within inter-governmental organizations and by ensuring corporate human rights responsibility.
4. This Parallel Report should be read in conjunction with the legal analysis submitted in the Parallel Report of the Global Initiative for Economic, Social and Cultural Rights submitted to the Committee in July 2013.

II. US Corporate Accountability Abroad

A. Corporate Human Rights Violations in occupied Palestine

5. The Special Rapporteur on the situation of human rights in the Palestinian occupied territories since 1967, Richard Falk, submitted a report to the United Nations Secretary-General on 19 September, 2012 focusing on the legal responsibility of business enterprises, corporations and non-State actors involved in activities relating to Israel's settlements in the occupied Palestinian territory.¹
6. We seek to further the work of the Special Rapporteur and many other organizations around the world in an effort to bring to the forefront transnational corporations' complicity in human rights violations. We intend to further explore two of the United States corporations named in the Special Rapporteur's report to provide examples of why it is so important that the Human Rights Committee seek new mechanisms to enforce extraterritorial obligations on the United States government and human rights obligations on US corporations directly. Without such a lasting and effective effort by the international community these companies will continue to act with impunity and countless atrocities will result.
7. The Israeli settlements have produced a dire situation in occupied Palestine. Specifically, we reference what the UN Special Report characterizes as "the grave circumstances of the Palestinian people, living under prolonged occupation and with no realistic prospect of its termination in the near future."² The atrocities and violations include violations of ICCPR Article 17 including forced evictions, sealing of homes, punitive home demolitions, and the destruction of gardens, schools, and playgrounds. With the aid of corporate non-state actors, the Israeli government has also developed a well-organized surveillance system and gated checkpoint access system separating the Palestinian

¹RICHARD FALK, REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE PALESTINIAN TERRITORIES OCCUPIED SINCE 1967, UN DOC A/67/379, 1627, 2 (2012).

²*Id.* at 3.

territory and the Israeli-occupied sections which at times rises to violations of ICCPR Article 12 guarantee of freedom of movement.³ In addition to the demolition, destruction, and movement-controlling surveillance system the Israeli government has also employed the companies named in this report to help construct and maintain “[a] 168 km long, concrete and wire” Barrier [that] separates East Jerusalem from the rest of the West Bank” which in essence “has meant that Palestinians living in the West Bank can no longer travel freely into East Jerusalem.”⁴ Simply put, this barrier has restricted the Palestinian people’s access to health care, education, and religious sites.⁵ These factual scenarios listed below represent only the surface of what Israeli settlement expansion has meant for the Palestinian people living under oppressive circumstances.

1. Caterpillar

8. Caterpillar is headquartered in Illinois, USA.⁶ With more than 132,000 employees, over \$17.37 billion in quarterly sales and revenues, and \$1.699 billion in quarterly profit, Caterpillar “is the world’s largest maker of construction and mining equipment, diesel and natural gas engines, and industrial gas turbines, and has stated that it “drives positive and sustainable change on every continent.”⁷ Yet its sale of machinery for construction and mining purposes is not why it has been included in the Special Rapporteur’s report. For decades Caterpillar has sold machinery, specifically its D-9 bulldozers, to the Israeli government and in turn the Israeli government has used these machines in the oppression and destruction of the Palestinian people’s lives.⁸ This report will describe three specific instances in which Caterpillar equipment has been deployed in human rights violations in occupied Palestine and other first hand-accounts where these militarized bulldozers have been used to destroy the homes of Palestinian families.

a. The Demolition of Jenin: ICCPR Articles 7 and 17

9. Jenin was home to more than 14,000 people in April of 2002.⁹ While it was a refugee camp it also served as the “central battleground in Operation Defensive Shield, an Israeli military operation which saw the “most extensive and severe” human rights violations since the occupation began in 1967.”¹⁰ This operation had been described as a “wholesale leveling of more than one hundred buildings” most of them multi-family dwellings.”¹¹ The following account taken by Human Rights Watch is the embodiment of how Caterpillar’s compliance has facilitated countless human rights violations:

Jamal Fayid was a thirty-seven-year-old paralyzed man living in the Jurrat al-Dahab area of the camp, and his family could not evacuate him in time. Despite the pleas of the family, the IDF bulldozer refused to stop the demolition of the home on April 6. Jamal Fayid was killed in the collapsed building. It is difficult to see what military goal could have been furthered or what legitimate consideration of military necessity could be put forward to justify the crushing to death of Jamal Fayid without giving his family the opportunity to remove him from his home. The remains of a number of Palestinian militants have been recovered from collapsed buildings, as well as those of civilians who were known to have died but whose remains could not be evacuated prior to the bulldozing. At this writing, recovery efforts continue at the

³ WHO PROFITS, TECHNOLOGIES OF CONTROL - THE CASE OF HEWLETT PACKARD 16 28 7 (2011).

⁴ U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities* (Barrier Report) at 4 (6th Upd.) (June 2007).

⁵ See generally Barrier Report (2007) (explaining the effects of the barrier on the civil, political, economic, and social rights of the Palestinian people in the occupied territories).

⁶ WAR ON WANT, CATERPILLAR: THE ALTERNATIVE REPORT 16 16, 2 (2005).

⁷ FALK, *supra* note 1 at 12 (citing Caterpillar’s general information website).

⁸ WAR ON WANT, *supra* note 6 at 2.

⁹ *Id.* at 6.

¹⁰ *Id.* at 6 (citing Israeli human rights centre B’Tselem).

¹¹ HIRSH GOODMAN & JONATHAN CUMMINGS, THE BATTLE OF JENIN (Vol. 14 No. 3) 43 (2002).

Jenin refugee camp, and it is possible that more remains of civilians or armed Palestinians killed during the bulldozing will be recovered.¹²

10. Most residents in the camp were given little if any time to gather what possessions they were able to carry on their person and flee what was to some was the only home they had ever known. Most of them were alerted to the coming attack only when they were within audible range of the sirens and mechanical gears of the bulldozers approaching to destroy their homes. In a matter of moments, the people of Jenin's lives were destroyed; their homes, access to clean water, source of food, and intangible memories leveled before their eyes. This was done all in the name of Israel's right to defend itself from terrorism and suspicions that militants were present in the camp.

b. Destroying the Homes and Roads to Rafah: ICCPR Articles 7, 12 and 17

11. In an August 2004 report to the UN General Assembly John Dugard, then UN Special Rapporteur on human rights in the Occupied Palestinian Territories wrote, referring to the Israeli military attacks in Rafah:

Homes have been destroyed in a purely purposeless manner. Caterpillar bulldozers have savagely dug up roads, including electricity, sewage and water lines, in a brutal display of power. The time has come for the international community to identify those responsible for this savage destruction of property and to take the necessary legal action against them.¹³

12. Men, women, and children regardless of their age or religion found their roads to school, work, and place of worship torn apart with no explanation justifying what had happened. The people of Rafah had the farmland that they had worked on, ate from, and lived on taken from them. They watched as their food was crushed and rolled over by the Caterpillar bulldozers. They hopelessly sat there, staring out at bleak and uncertain futures, not knowing even if they would survive. The Israeli Military's Operation in Rafah was called *Operation Rainbow*, lasted at least a week, and left at least 43 dead.¹⁴ Human Rights Watch specifically reported that "the Israeli military used Caterpillar D9s to indiscriminately tear up roads, destroying water and sewage networks, and creating a significant public health risk in an already vulnerable community."¹⁵ These bulldozers were employed as machines of death and destruction, under the color of national and international security. The stories of Jenin and Rafah are just two of the many instances where Caterpillar bulldozers were militarized and used to destroy the homes, roads, gardens, schools, and places of worship of the Palestinian people in the occupied Palestinian territory. The UN Special Rapporteur on the situation of human rights in the occupied Palestinian territories cited B'tselem centre for human rights statistics showing that 61,802 houses were demolished from 2004 to 2008 (inclusive), leaving 13,177 persons homeless.¹⁶ in occupied Palestine.

¹² *Id.* at 42-43.

¹³ JOHN DUGARD, REPORT OF THE SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN THE PALESTINIAN TERRITORIES OCCUPIED BY ISRAEL SINCE 1967, UN Doc A/59/256, 1 ¶20, 9 (2004).

¹⁴ WAR ON WANT, *supra* note 6 at 7 (citing Human Rights Watch, *Razing Rafah: Mass Home Demolitions in the Gaza Strip* (October 2004)).

¹⁵ *Id.*

¹⁶ CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE) & AL-HAQ, ISRAEL'S VIOLATIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS WITH REGARD TO HOUSE DEMOLITIONS, FORCED EVICTIONS AND SAFE WATER AND SANITATION IN THE OCCUPIED PALESTINIAN TERRITORY AND ISRAEL 16 55, 7 (2000) (citing B'tselem, *Demolition for Alleged Military Purposes*).

c. *The Death of Rachel Corrie: ICCPR Article 6*

13. On March 16, 2003, Rachel Corrie, an American peace activist, was run over and killed by an Israeli "militarized" bulldozer being driven by an Israeli Defense Forces soldier.¹⁷ She had been standing between the bulldozer and the home of a Palestinian family with whom she had developed a close relationship as an activist in the International Solidary Movement for the Palestinian people.¹⁸ While it has been admitted by several sources, including colleagues with her that day, that she had put herself in a very dangerous position, this was not the scene of "active hostilities" or ongoing combat.¹⁹ According to witnesses, the bulldozer was moving at the standard and stable five miles per hour, a pace observed when these bulldozers demolish houses. Corrie was clearly visible by those operating the bulldozer, evidenced by obscenities yelled at her by the operators in an effort to move from the path of the bulldozer.²⁰ Human Rights Watch took this first-hand account of one of Corrie's colleagues, describing the moment when the bulldozer pushed the earth over Corrie and drove over her:

Corrie stood and balanced on the rising mound. The bulldozer continued without changing pace, and Corrie tried to get down. When she was standing on top she was standing quite high, so when she slid down she slid on her side and her right calf was out of [our] view. She slid and then she fell and the earth went vooomsh. . . totally over her. At the point where her calf disappeared and she disappeared, everyone was going crazy, yelling, shouting, motioning, screaming. I had my megaphone. The driver would have had a pretty good full view if he was looking at us... The bulldozer kept going on, forward, and then stopped a few meters after she disappeared. Her point of disappearance was underneath the cockpit. The bulldozer waited for what seemed like some time but was probably a few seconds, and then started to withdraw.²¹

14. It would be difficult to ask that Caterpillar or the United States government be held responsible for the single misuse of a product that Caterpillar sold to the Israeli government in unitary and discrete sales transaction. However, the relationship between Caterpillar and the IDF was extensive. In response to an article detailing the complicity of companies like Caterpillar in human rights violations in the Middle East, Caterpillar noted that it "ha[s] compassion for all persons affected by the political strife in the Middle East and support a peaceful resolution to the Israeli-Palestinian conflict."²² Caterpillar went on to state that it promotes the "constructive use" of the equipment it sells, and it does "not condone the illegal or immoral use of any Caterpillar equipment, and consistent with Caterpillar's Worldwide Code of Conduct, we expect our customers to use our products in environmentally responsible ways and consistent with human rights and the requirements of international humanitarian law."²³ Defending its position, Caterpillar shielded itself behind the anti-boycott provisions in two US laws, arguing that it could not boycott any foreign buyer unless the US government approves such a boycott. Despite this argument, a blanket boycott is unnecessary. Instead, Caterpillar could protect against the militarized misuse of its equipment by contracting restrictions of use in its sales agreements, such as the insertion of provisions eliminating further sales if Caterpillar products were employed in human rights violations. Such an option would allow Caterpillar to send a clear message that it will not be complicit in human rights abuses.

15. The initial sales agreement between the Israeli government and Caterpillar was not solely in the decision-making hands of the management at Caterpillar. In the aftermath of Rachel Corrie's

¹⁷ Human Rights Watch, *Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing*, 22 June 2005, E1707, available at: <http://www.unhcr.org/refworld/docid/42c3bd100.html> [accessed 9 March 2013]

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* (citing Human Rights Watch interview, Alice (full name withheld on request), Jerusalem, May 5, 2003).

²¹ *Id.* (citing Human Rights Watch interview, Thomas Doyle, Rafah, April 15, 2003).

²² Letter from Douglas R. Oberhelman, CEO, Caterpillar Inc., to Business & Human Rights Resource Centre regarding: "Volvo misses the mark on responsibility for the protection of human rights", Adri Nieuwhof, Electronic Intifada, 13 Jan 2012 (Jan. 23, 2012) <http://electronicintifada.net/blogs/adri-nieuwhof/volvo-misses-mark-responsibility-protection-human-rights> [accessed February 24, 2013]

²³ *Id.*

death, her parents unsuccessfully attempted to bring suit against Caterpillar in United States District Court. In affirming the District Court's dismissal of the case, based on the presence of a political question, the US 9th Circuit Court of Appeals made the following factual observations:

There is undisputed evidence in the record, however, that the United States government paid for every bulldozer that Caterpillar transferred to the IDF. Caterpillar submitted an affidavit by Frank Weinberg [] General Manager of Caterpillar's Defense & Federal Products division, in which Weinberg states that the United States government has approved and financed all contracts between Israel and Caterpillar dating back to at least 1990. Appended to the Weinberg [affidavit] is a copy of a letter from the Defense Security Cooperation Agency [] an arm of the United States Department of Defense, sent in September 2001 to the Israeli government and copied to Caterpillar. The letter grants "[f]unding approval" for the Israeli government's purchase of fifty Caterpillar D9 bulldozers under the Foreign Military Financing program. [the Corrie's lawyers] introduced a letter from Matthew Reynolds, the Acting Assistant Secretary of State for Legislative Affairs, indicating that Israel acquired the bulldozers "on a commercial contract basis" financed through the FMF. Amicus [in that case] United States Department of State confirm[ed] that "funds requested by the Executive and appropriated by Congress were used by Israel to purchase the equipment in question." ²⁴

16. As noted, this practice has been going on for at least 23 years. In the absence of recognized extraterritorial obligations, US courts will not consider such cases on the merits. Without the threat of legal liability, there will be no disincentive for Caterpillar to continue selling these bulldozers that Israel utilizes to, destroy communities such as Jenin and Rafa and against peaceful protestors like Rachel Corrie. Accordingly, victims of these human rights violations in occupied Palestine will never obtain the justice they deserve.

2. Hewlett-Packard: ICCPR Articles 12 and 26

17. According to Hewlett-Packard's corporate ethics information on the internet, "Legal compliance is the absolute minimum we expect from our employees, partners, and suppliers. We promote a culture of integrity and ethical decision making everywhere we operate, even when it means holding ourselves and our partners to a higher standard than local laws or customs require."²⁵ However the internet is also replete with information from non-governmental organizations around the world that specifically cites Hewlett-Packard's (HP) involvement with the Israeli government's human rights abuses in the occupied Palestinian territories.

18. In the UN Special Rapporteur's September 2012 report, HP is specifically cited as one of the companies explicitly involved with the human rights violations occurring in the occupied territories. The UN Special Report outlined to the extent of what is known about the relationship between HP and the Israeli government: "HP has contracts" to provide a system of surveillance and identification, [] the "Basel biometric system", the Israeli identity card system (biometric identity cards []) in settlements and checkpoints, [] and to provide services and technologies to the [military]."²⁶ At a first glance, the biometric identity card system, the checkpoints, and the technological support would not seem to support the commission of a human rights violation. However, the discriminatory use of the system and the end result establishes HP's complicity with the Israeli government's abusive control over the Palestinian people in the occupied territories.

19. The UN cited NGOs such as "Who Profits" for their thorough documentation of HP's involvement in the human rights violations in the occupied territories. In a 2009 report, Who Profits 2009 noted that HP's wholly owned subsidiary, EDS, was the prime contractor in the creation of the Basel system, which was implemented in the checkpoint systems in the separation wall that was

²⁴ *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 978 (9th Cir. 2007)

²⁵ HP | Corporate Ethics, <http://www8.hp.com/us/en/hp-information/global-citizenship/governance/ethics.html> [accessed March 9, 2013]

²⁶ FALK, *supra* note 1 at 20.

declared illegal by the International Court of Justice.²⁷ These mandatory identification cards are required for any Palestinian person who wishes to travel from the occupied territories to Israel. HP's assistance in the creation of the biometric cards themselves and the maintenance of the system has aided the Israeli government in restricting the free movement of the Palestinian people in violation of various human rights instruments.²⁸

20. The effects of these checkpoints are not just simply restrictions on the movement of the Palestinian people from one geographical area to another. The 57 permanent checkpoints located well within the interior of the West Bank violation more than the Palestinian's people ability to move freely: "In places such as Hebron, Palestinian children are even forced to go through checkpoints just to get to school."²⁹ However, the restriction of movement and the impediments to access to education for children are not the only negative results of the checkpoint system built and maintained by Hewlett Packard. The delays in health care have yielded tragic results: it has been reported that at least 12 deaths and 35 still-births [have occurred] as a result of pregnant mothers and other Palestinians in need of medical attention being delayed at checkpoints.³⁰ From an economic standpoint, "the World Bank reported that [in 2004] Israeli checkpoints and other movement restrictions had caused Palestinians to suffer -one of the worst recessions in modern history." ³¹ Accordingly, HP's willingness to design and maintain systems they know will be used by the IDP to violate human rights should subject them to liability for those actions.

B. Concluding Thoughts

21. Caterpillar and HP are just two of the many companies incorporated and domiciled in the United States that assist the Israeli government in the occupation of the Palestinian territory and the violation of individual and collective human rights in that context. Incidents like those mentioned above will continue to occur if countries like the United States are not held accountable and do not in turn hold these private non-state actors accountable for the human rights violations that result from their direct or indirect actions.

B. Human Rights Violations associated with World Bank Projects

1. Introduction

22. In 1944, forty-five governments from around the world meet in Bretton Woods, New Hampshire and adopted the Articles of Agreement that would eventually lead to the formation of the World Bank Group.³² With the stroke of a pen, the United States government subscribed its first extended capital contribution to the World Bank, totaling a little over \$3.75 billion.³³ The initial purpose of the World Bank was to finance and facilitate the reconstruction and rebuilding of Europe and Asia-Pacific after World War II. Over the decades, the bank has become a lending institution comprised of five closely associated groups that oversee and finance a vast array of projects intended to alleviate global poverty and foster global development.

²⁷WHO PROFITS, TECHNOLOGIES OF CONTROL - THE CASE OF HEWLETT PACKARD 16 28, 7 (2011).

²⁸ *Id.*

²⁹ Steve Demarest, Students for Justice in Palestine, *Op/Ed: Send Hewlett-Packard packing*, The Eagle Online (August 29, 2012), <http://www.theeagleonline.com/opinion/story/op-ed-send-hewlett-packard-packing/> (citing a February 2012 report by Israeli NGO B'tselem)

³⁰ *Id.* (citing a Palestinian Red Crescent report)

³¹ *Id.* (citing a World Bank report in 2004)

³² *World Bank Group Historical Chronology: 1944 – 1949*, The World Bank, <http://go.worldbank.org/QEKNM08HO0> (last visited April 6, 2013).

³³ *Id.*

23. Some of the projects funded by the World Bank Group have been associated with human rights violations. Despite the implementation of the Inspection Panel, and corollary review mechanisms with the bank's private lending arms, many violations have been ignored or dismissed, leaving the individuals adversely affected by these projects with no legal recourse. Through examples such as the Chixoy Dam, the Narmada Dam, and the Chad-Cameroon Pipeline loans, this report will demonstrate: (1) the irreparable damage caused by these projects; (2) how the lack of effective mechanisms (internal as well as external) have left thousands of injured individuals without any type of affective remedy or other recourse; and (3) how World Bank projects could better be crafted and implemented if Member States abided by their respective human rights obligations in all decisions affecting Bank activities.

2. The Chixoy Dam Project: Reparations Still Unpaid: ICCPR Articles 6, 17

“The land that now lies underneath the water is vast ... but the land that has been given to us now is much less and it is not good land, because it does not produce anything. There are no trees, there is no water, the people cannot cultivate.” “They promised us a change of life, better living conditions. But the truth is that today we are worse off.”

Survivors of the Rio Negro massacres³⁴

24. In 1975, the World Bank and other international lending institutions provided the US-backed military government in Guatemala with approximately \$1 billion in loans to construct the Pueblo Viejo-Quixal Hydroelectric Project (or Chixoy Dam Reservoir Project).³⁵ To administer these funds, the Guatemalan government set up a supervisory board to work in conjunction with the World Bank to coordinate the dam project and facilitate the building of the dam itself. This supervisory board, known as the *Instituto Nacional de Electricificación* (INDE), was responsible for administering the funds according to the World Bank policies. These policies included that the state government or its agent (INDE) ensure that a proper rehabilitation and resettlement program is set in place before the displacement of communities occurred due to dam building.³⁶ These policies were not carried out in the manner in which they were prescribed. Despite internal regulations requiring the World Bank to monitor compliance with the project, little oversight was exercised. Mandates to ensure that dam-affected communities were consulted and appropriately relocated were ignored.

25. As reported by COHRE, it was “Not until 1977, almost two years after construction began, did INDE officials fly by helicopter into the small village also named Río Negro to inform residents that they would have to abandon their homes and lands because these were soon to be flooded.”³⁷ This does not comply with the procedure publicized as the World Bank's policies under its loan agreements. Yet the financing and construction of the dam continued on in the name of development. Frustrated with the peaceful and organized resistance of the Rio Negro community in general to relocation, the residents of Rio Negro were evicted with a brutal series of massacres in which over 440 Maya Achi men, women and children were killed. The relocation plan for the survivors was wholly inadequate, and “the survivors of the massacres, who were subsequently displaced, have only received meagre [*sic*] compensation from the Guatemalan government and live in extreme poverty.”³⁸

26. While the World Bank may not exercise complete and direct control over actors associated with the development projects it funds, it can and should implement measures intended to safeguard against abuses. With the widespread publicity of the 1982 Rio Negro massacres, the World Bank had

³⁴ CENTRE ON HOUSING RIGHTS AND EVICTIONS & RIGHTS ACTION (ORGANIZATION), CONTINUING THE STRUGGLE FOR JUSTICE AND ACCOUNTABILITY IN GUATEMALA: MAKING REPARATIONS A REALITY IN THE CHIXOY DAM CASE 12 (2004).

³⁵ *Id.* at 13

³⁶ *Id.*

³⁷ CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE) AND RIGHTS ACTION (ORGANIZATION), *supra* note 3 at 13.

³⁸ Bretton Woods Project, WORLD BANK ACCOUNTABILITY: DEMAND FOR REPARATIONS WON'T GO AWAY (BRETTON WOODS PROJECT) BRETTON WOODS PROJECT (2004), <http://www.brettonwoodsproject.org/art-82986> (last visited Apr 7, 2013) (citing CHORE report).

notice of these atrocities when they continued to disburse the final installments of the loan money to the military government in Guatemala in 1985.³⁹ Given the extent of World Bank involvement and presence of Bank staff at the Chixoy site between 1979 and 1991, not to have known about the violence and repression at the time would have required an extraordinary and sustained dedication to ignorance on the part of World Bank officials.⁴⁰ Even if the World Bank cannot always control the actions of its partners, it can certainly exercise fiscal control over the disbursement of funds to partners who perpetrate abuses in association with those projects.

27. For thirty years, various NGOs have been advocated for reparations for the victims of the Cixoy Dam massacres from the state and international financial institutions that funded the project, to no avail. Neither the World Bank nor the Guatemalan government is willing to make good on their promise of resettlement, rehabilitation, and now reparations for the horrific atrocities that occurred at Rio Negro. Without effective international pressure or affective external mechanisms to hold the World Bank and its member states (such as the United States) accountable for their projects' ramifications, the victims, their families, and the survivors of human rights violations like those noted above will never be given the justice they deserve.

3. The Chad-Cameroon Pipeline – The Influence of Third-Party Non-State Actors

The World Bank should be held accountable and must properly address the failure to deliver poverty reduction and protection of indigenous peoples and the environment in the Chad-Cameroon project. It must also learn from the mistakes that were made here for other investments in extractive industries or large-scale infrastructure. The World Bank's 'Decade for Africa' should not become a mockery.
- Archbishop Desmond Tutu

28. In 2000 ExxonMobil, Malaysian Petroleum Nasional Berhad (Petronas), and Chevron formed an oil company consortium to take over the oil exploration and export that had been in the discovery stage in Chad for nearly three decades.⁴¹ Previous to the formation of this partnership, companies such as Royal Dutch Shell and Elf Aquitaine withdrew from a similar consortium with ExxonMobil for reasons that included concerns about the environmental impact and the political instability of the Chadian and regional governments.⁴² The financing structure created by this consortium, in conjunction with the World Bank Group and the private sector arm under the World Bank (the International Finance Corporation (IFC)) lead to the eventual human rights violations and the withdrawal of the World Bank Group from the project. This section will demonstrate: (1) how third-party private actors' influence leads to ineffective enforcement of World Bank policies; and (2) spreading of blame over many actors (the World Bank, the state governments, and the private oil companies) will lead to no one taking enough of the responsibility to remedy the violations that occur.

29. When the World Bank withdrew from the project, it compiled an Implementation Completion Report (ICR) that noted that ExxonMobil 'made it clear that it would not be able to go ahead [with the project] without the political risk coverage provided by World Bank participation.'⁴³ The Bank was faced with two alternatives; (1) the Bank could decline to join the project and risk the oil money being diverted to private coffers, or (2) the Bank join the project, despite the criticism of political and environmental controversy and hope to channel the project profits into positive development purposes

³⁹ *Id.*

⁴⁰ *Id.* (citing a 1996 report by NGO Witness for Peace)

⁴¹ CENTER FOR ENERGY ECONOMICS, CHAD-CAMEROON OIL PIPELINE, Bureau of Economic Geology, Jackson School of Geosciences, The University of Texas at Austin 3 (accessed April 6, 2013).

⁴² CENTER FOR ENERGY ECONOMICS, *supra* note 11. (citing 'Pollution worries mount' by Neil Ford, African Business, Jan 2001 p. 33; 'Shell and Elf pull out of Chad-Cameroon pipeline' Drillbits and Tailings, Volume 4, Number 19, November 23, 1999).

⁴³ Korinna Horta, *The Chad-Cameroon Oil & Pipeline Project*, A PROJECT NON-COMPLETION REPORT: ENVIRONMENTAL DEFENCE, CENTRE FOR ENVIRONMENT AND DEVELOPMENT & CHADIAN ASSOCIATION FOR THE PROMOTION AND DEFENCE OF HUMAN RIGHTS, 7 (2007), http://apps.edf.org/documents/6282_ChadCameroon-Non-Completion.pdf (last visited Apr 7, 2013).

(e.g., combating Chadian and Cameroonian poverty). The World Bank chose the lesser of two evils in hopes that they could curb the harmful effect of a project like this in a region ripe for human rights violations.

30. Though pressured by third-party actors like ExxonMobil, the World Bank still had both the obligation and the opportunity to thoroughly examine the concerns of political instability and the environmental effects of the project. The Bank's failure to follow recommendations of the International Advisory Group, its own Operations Evaluation Department, and many other human rights groups should give rise to its liability for the resulting atrocities in Chad. Once the project began, the World Bank found itself engulfed in reports from independent human rights advocates citing the "pervasive problem of lawlessness in the region" and noting that the political instability and that civil unrest had even lead to the evacuation of World Bank staff to nearby Cameroon.⁴⁴ Published reports claimed that "[r]obbery, pillage and banditry not only go unpunished, they usually involve the security forces [government and privately provided by the oil consortium]."⁴⁵

31. Despite the widespread publicity of the environmental deterioration, forced evictions of indigenous people, rape, torture, mass killings in the name of civil war, the World Bank continued to make payments and facilitate further investment under the original project agreement. The World Bank did not officially withdraw from the project until September 9, 2008. Still unwilling to fully recognize the effects of the project on the worsening human rights situation in Chad, the World Bank explained its withdrawal by concluding that "the [Chadian] government did not allocate adequate resources critical for poverty reduction in education, health, infrastructure, rural development and governance. Regrettably, it became evident that the arrangements that had underpinned the Bank's involvement in the Chad-Cameroon pipeline project were not working."⁴⁶

32. Attributing its withdrawal to a governmental decision to increase the profit distribution in favor of the general government coffers allowed the Bank escape answering for the human rights violations that were a direct result of the project they had organized almost a decade earlier. The project continued in a similar vein: the oil consortium continued to pull out extraordinary profits from the oil exportation; the Chadian government fell into further political strife; the human rights situation in Chad has continued to move in a downward spiral; and no one (the World Bank, the Chadian government, the oil consortium) took responsibility for the situation. The World Bank's choice to hide behind their misrepresentations and false justifications in their ICR has allowed them to paint a picture that the proper planning and precautions were set in place prior to the start of the pipeline project. The Bank believed in the development potential of the project, reassured by the representations of parties like ExxonMobil. Ultimately however, the Bank's lack of due diligence for Chad-Cameroon pipeline project and the Oil Consortium's disregard for of the Chadian people resulted in widespread human rights violations.

4. The Narmada Dam – What Happens when the Bank Leaves

33. In 1961, the Prime Minister of India inaugurated the Narmada Valley Dam Project as a nation-building project in the wake of Indian independence.⁴⁷ "The project [] promised to irrigate 1.8

⁴⁴ *Id.* at 10.

⁴⁵ *Id.*

⁴⁶ Chad - World Bank Statement on Chad-Cameroon Pipeline, THE WORLD BANK (2008), <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CHADXTN/0,,contentMDK:21894530~menuPK:349894~pagePK:2865066~piPK:2865079~theSitePK:349862,00.html> (last visited Apr 7, 2013).

⁴⁷ Smita Narula, *The story of Narmada Bachao Andolan: Human rights in the global economy and the struggle against the World Bank*, HUMAN RIGHTS ADVOCACY STORIES, DEENA R. HURWITZ, MARGARET L. SATTERTHWAITTE, DOUGLAS B. FORD, EDS., 353 (2009). (citing 41 Harv. Int'l L.J. 529)

million hectares in Gujarat and 75,000 in Rajasthan, generate power for three states, provide irrigation to 2.5 million villagers and drinking water to 29.5 million.⁴⁸

34. The following, however, is an adequate summary of the resulting effect of the Narmada project:

The Narmada Valley project is a development scheme to harness the Narmada river, one of the longest and most unexploited in India, for hydropower, drinking water, and irrigation. According to original plans, some 30 major, 135 medium, 3000 minor, and thousands of smaller dams would be built along the river, which runs through three states in central and western India.⁴⁹ Of truly gargantuan proportions, the largest dam, Sardar Sarovar, would alone potentially affect 25-40 million people, whereas the canal to be built would have displaced 68,000 households.⁵⁰ This human casualty would compound the already considerable environmental costs to a fertile valley boasting a wide variety of fauna and flora.⁴⁹

35. The government, well aware of the adverse effects and at the urging of the World Bank, sought to resettle the displaced inhabitants of the Narmada basin. The government claimed it intended to give the displaced inhabitants new land, access to amenities, and some type of compensation, but in reality, there was not enough land available for distribution; amenities were substandard; and settlers had difficulty integrating with host communities.⁵⁰

36. Through its involvement in this project, the World Bank sought to minimize its negative side effects while maximizing its financial and technical viability.⁵¹ The uncompensated human rights violations in this case stem from two separate actions: (1) the inability or unwillingness of the Bank to enforce its own policies, and (2) the withdrawal of the Bank from the project without intent to remedy the damage it caused. Despite the Bank's effort to reach its goals, the Bank ignored shortcomings in the approval process⁵¹ to the point of violating its own policies concerning resettlement and environmental degradation.⁵²

37. However, even with the Bank's inadequate monitoring and implementation of its safeguard policies, it could have remedied these actions by providing reparations or compensation to those affected by the project. Instead, as a result of a 357-page report compiled by a semi-independent Commission outlining the Bank's disregard for its own policies concerning the displaced inhabitants, the Bank announced the intent to create an Inspection Panel to review the project. The Indian government, knowing that it would not meet the announced benchmarks for resettlement and environmental requirements under the loan agreement, cancelled the remaining portion of the loan and the World Bank withdrew from the project.⁵³

38. The advocacy of domestic and international non-governmental organizations were instrumental in the Bank's withdrawal from the Narmada project and to the Bank's marginal increase in self-accountability. The Inspection Panel was created to provide oversight and review in the

⁴⁸ Balakrishnan Rajagopal, *From Resistance to Renewal: The Third World, Social Movements, and the Expansion on International Institutions*, 41 Harv. Int'l L.J. 529, 578 (2000)

⁴⁹ *Id.* at 566. (internal citations omitted)

⁵⁰ Narula, *supra* note 17 at 355. (internal citations omitted)

⁵¹ Narula, *supra* note 17 at 356 (citing Catherine Caufield, *Masters of Illusion: The World Bank and The Poverty of Nations*, 11 (1997).

⁵² *Id.* at 357 (internal citations omitted); *See also*, Narula at 358 (a comprehensive plan for the resettlement of affected individuals had not been formulated even six years after the [Bank's] approval.[] Although the Bank attempted to address this violation by imposing deadlines on the state governments to produce these plans, these deadlines were not enforced.[] Nor did the Bank address the vast and foreseeable ecological consequences of the Sardar Sarovar dam; the Bank approved the project even though the Indian Ministry of Environment and Forests would not consent to the project without completed environmental impact studies, which were never performed.[])

⁵³ *See generally*, Narula, at 365-368 *The World Bank Withdraws*

aftermath of the Bank's withdrawal from projects like Narmada. The Bank's withdrawal effected the Narmada situation in three distinct ways. "First, the withdrawal itself greatly reduced the international dimension of the Narmada struggle;"⁵⁴ relieving the Indian government of accountability to international bodies and pressures. Second, the domestic movement to oppose the project was left with only domestic mechanisms to defend its rights.⁵⁵ Finally, "the [Indian] government's continued construction raised the stakes of the struggle for both sides" more and more villages faced submergence, and the government's commitment to the Narmada Project deepened as the project progressed, and continues to this day.¹⁵⁶

39. The Indian Supreme Court, has affirmed the government's claim to have the constitutional authority to continue with dam building in India.⁵⁷ Though the Court implemented safeguard "prerequisites" to help ensure that future displaced individuals are properly resettled, the Court did not provide relief for those already displaced and aggrieved by the project. The World Bank has withdrawn from the project, the Indian government refuses to provide appropriate reparations and relocation services, and because neither party is willing to take responsibility for remediating the harms caused by the project, the displaced inhabitants of the Narmada basin continue to be denied justice.

5. Conclusion

40. The examples above demonstrate the inadequacies of the current mechanisms of accountability within the World Bank structure. Inadequate monitoring, a lack of due diligence, and misguided withdrawal from projects, exemplify the inadequacies of current policies and administrative procedures. Clearly, compensation, reparations, and justice for those affected by the projects will not come from internally designed and implemented policies. Instead, accountability requires internal and external mechanisms through which aggrieved parties can hold the Bank and member states responsible for the human rights violations connected to the Bank funded projects.

41. The International Law Commission (ILC) has addressed the issue of the international responsibility of States for the internationally wrongful act of an international organization. The ILC, in draft articles on the Responsibility of International Organizations, states in Article 1 that the articles apply to the international responsibility of States for the internationally wrongful act of an international organization. Furthermore, the provisionally adopted Article 4 states, *inter alia*, that an internationally wrongful act has occurred "when conduct consisting of an action or omission: (a) is attributable to the international organizations under international law; and (b) constitutes a breach of an international obligation."⁵⁸

42. The Maastricht Principles on extra-territorial obligations reaffirm the obligations enunciated in the International Law Commission's draft articles. Regarding State responsibility, Maastricht Principle 11 states that:

State responsibility is engaged as a result of conduct attributable to a State, acting separately or jointly with other States or entities, that constitutes a breach of its

⁵⁴ *Id.* at 373 (citing Balakrishnan Rajagopal, *The Role of Law in Counter-hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India*, 18 LEIDEN J. INT'L L. 345, 355 (2005).)

⁵⁵ Narula, *supra* note 17 at 373.

⁵⁶ *Id.*

⁵⁷ *Id.* at 379

⁵⁸ International Law Commission, Responsibility of International Organizations, adopted by the ILC at its sixty-third session, in 2011.

international human rights obligations whether within its territory or extraterritorially.⁵⁹

43. Regarding obligations of States as members of international organizations, Maastricht Principle 15 states that:

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extra-territorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.⁶⁰

44. Again, while Member States of IFIs all have human rights obligations, those IFIs all too often seek to create immunity for human rights violations and it is a challenge to find ways to pierce that immunity. It is hoped that the Human Rights Committee will recommend that States Parties to the ICCPR abide by their respective human rights obligations in their roles as Member States of inter-governmental organizations, including IFIs such as the World Bank.

⁵⁹ Maastricht Principles on Extra-Territorial Obligations in the area of Economic, Social and Cultural Rights, adopted on 28 September 2011 by experts in international law and human rights.

⁶⁰ *Id.*